

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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CECIL SHAW,

Civil No. 10-27 (ADM/SRN)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

HENNEPIN COUNTY ADULT  
DETENTION CENTER, OFFICE OF  
PUBLIC DEFENDER, Lt. DON JOHNSON,  
JOHN DOE 1, and JOHN DOE 2,

Defendants.

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This case is before the undersigned United States Magistrate Judge on Plaintiff's application for leave to proceed in forma pauperis, ("IFP"), as permitted by 28 U.S.C. § 1915(a). (Docket No. 2.) The matter has been referred to this Court for report and recommendation under 28 U.S.C. § 636 and Local Rule 72.1. For the reasons discussed below, it is recommended that Plaintiff's IFP application be denied, and that this case be dismissed without prejudice.

Plaintiff commenced this action while detained at the County Jail for Hennepin County, Minnesota. He did not pay the \$350 filing fee required by 28 U.S.C. § 1914(a) when he commenced this action, but instead filed the IFP application that is now before the Court.

Because Plaintiff was a "prisoner" when he filed this action, (see 28 U.S.C. § 1915(h)), his IFP application is subject to the requirements of the Prison Litigation Reform Act of 1995, ("PLRA"). This means, inter alia, that he must pay an initial partial filing fee pursuant to 28 U.S.C. § 1915(b)(1).

In this case, the initial partial filing fee that Plaintiff is required to pay under the formula prescribed by § 1915(b)(1) is \$10.40. However, Plaintiff did not tender his initial partial filing fee with his complaint and IFP application. Therefore, by order dated January 25, 2010, (Docket No. 6), Plaintiff was directed to pay his initial partial filing fee of \$10.40 within twenty days. The Court's order expressly advised Plaintiff that if he failed to pay the prescribed amount within the time allowed, he would be deemed to have abandoned this action, and it would be recommended that his case be dismissed pursuant to Fed. R. Civ. P. 41(b), for failure to prosecute.

The deadline by which Plaintiff was required to pay his initial partial filing fee has now passed, and Plaintiff has not tendered the payment due, nor has he offered any excuse for his failure to do so. Therefore, in accordance with the Court's prior order of January 25, 2010, it is now recommended that Plaintiff be deemed to have abandoned this action, and that the action be dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). See In re Smith, 114 F.3d 1247, 1251 (D.C.Cir. 1997) (failure to pay initial partial filing fee required by § 1915(b)(1) "may result in dismissal of a prisoner's action"); Amick v. Ashlock, No. 04-1171 (8<sup>th</sup> Cir. 2004), 2004 WL 2603590 (unpublished opinion) (prisoner action can properly be dismissed where prisoner fails to pay initial partial filing fee as ordered); Link v. Wabash Railroad Co., 370 U.S. 626, 630-31 (1962) (federal court has inherent authority to "manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases"); Henderson v. Renaissance Grand Hotel, 267 Fed.Appx. 496 (8<sup>th</sup> Cir. 2008) (unpublished opinion) ("[a] district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order").

Having determined that this action should be summarily dismissed for the reasons discussed above, the Court further recommends that Plaintiff's collateral motions – i.e., his motion to proceed IFP, (Docket No. 2), and his motion for appointment of counsel, (Docket No. 3) – should be summarily denied.

#### RECOMMENDATION

Based upon the above, and upon all the records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff's application for leave to proceed in forma pauperis, (Docket No. 2), be **DENIED**;
2. Plaintiff's motion for appointment of counsel, (Docket No. 3), be **DENIED**; and
3. This action be **DISMISSED WITHOUT PREJUDICE**.

Dated: March 8, 2010

s/ Susan Richard Nelson  
SUSAN RICHARD NELSON  
United States Magistrate Judge

Under D. Minn. LR 72.2(b) any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties by **March 23, 2010**, a writing which specifically identifies those portions of this Report to which objections are made and the basis of those objections. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment of the District Court, and it is therefore not appealable to the Circuit Court of Appeals.